

Kurt C. Peterson, OSB No. 980065

kpeterson@kilmerlaw.com

Kilmer, Voorhees & Laurick, P.C.

Attorneys at Law

732 N.W. 19th Avenue

Portland, Oregon 97209-1302

Telephone: (503) 224-0055

Fax: (503) 222-5290

Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
(Portland Division)

BRIDGETOWN NATURAL FOODS, LLC, a Delaware limited liability corporation,

Plaintiff,

v.

NETHER INDUSTRIES INCORPORATED, a Washington corporation,

Defendant.

Case No. _____

COMPLAINT

Breach of Contract and Negligence

Demand for Jury Trial

Nature of the Action

1.

Bridgetown Natural Foods, LLC (“Bridgetown”) brings this action against Nether Industries Incorporated (“Nether”) for claims of breach of contract and negligence. Nether’s acts and omissions caused damage to Bridgetown.

////

////

Jurisdiction and Venue

2.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1332(a). The parties are of diverse citizenship and the matter of the controversy exceeds \$75,000, exclusive of interest and costs.

Parties

3.

Bridgetown is a Delaware limited liability corporation who has a principal place of business in Portland, Oregon. Bridgetown is a maker of food products.

4.

Nether is a supplier and installer of food-grade stainless steel tank products whose principal place of business is located in Enumclaw, Washington.

Statement of Facts

5.

Bridgetown solicited from Nether a request for the purchase and installation of a new stainless steel chocolate melting tank for its production facility located in Portland, Oregon. On July 3, 2017, Nether sent to Bridgetown Quote 17-8624C. A copy of the Quote is attached as Exhibit A.

6.

On August 15, 2017, Bridgetown sent to Nether Purchase Order PO13120-0000-002 for the purchase and installation of a 660 gallon steel jacketed chocolate melt tank (the "Tank"). A copy of the Purchase Order is attached as Exhibit B. Pursuant to the terms of the Purchase Order contract, Nether agreed to supply the materials and labor for the installation of the Tank on site at the Bridgetown facility.

7.

On or about October 10, 2017, Nether finished the installation of the Tank.

8.

Bridgetown began using the Tank for the production of chocolate-coated energy bars in the evening of October 10, 2017. Bridgetown ran production with the use of the Tank from October 10 to the morning hours of October 12. During this time period, approximately 1.5 million energy bars had been made, individually wrapped, and boxed.

9.

Late into this production run, Bridgetown discovered the presence of plastic debris within the line leading from the Tank to other equipment downstream from the Tank. Upon investigation, Bridgetown discovered that stirring paddles within the Tank had separated from the paddle arm and became loose within the Tank. Pieces of the paddles had broken off and entered the chocolate within the Tank. Bridgetown further discovered that pieces of a plastic bushing had broken off and entered the chocolate within the Tank.

10.

The chocolate that was contaminated with plastic was used in the production of the bars. Bridgetown was unable to determine which individually wrapped bars were contaminated with plastic. Because of this inability to find the plastic, the entire lot of 1.5 million bars could not be marketed to the public for consumption.

11.

Bridgetown suffered total damages of \$519,480.00.

First Claim for Relief
(Breach of Contract)

12.

Bridgetown realleges and incorporates paragraphs 1 through 11 above.

13.

The Quote and Purchase Order constitute a contract between Bridgetown and Nether. Pursuant to the terms of the contract, Nether agreed to supply and install the Tank in exchange for payment by Bridgetown.

14.

Nether breached the contract in one or more of the following ways:

- a. Failing to ensure that the Tank was constructed of the proper materials so as to prevent pieces of the Tank from entering the food;
- b. Failing to use proper materials in the installation of the Tank so as to prevent pieces of the Tank from entering the food; and/or
- c. Failing to properly install the Tank so as to prevent pieces of the Tank from entering the food.

15.

Bridgetown has fully complied with the terms of the contract.

16.

Nether's breach is the proximate cause of the damages that Bridgetown alleges above.

Second Claim for Relief

(Negligence)

17.

Bridgetown realleges and incorporates paragraphs 1 through 11 above.

18.

Nether was negligent in one or more of the following ways:

- a. Failing to ensure that the Tank was constructed of the proper materials so as to prevent pieces of the Tank from entering the food;
- b. Failing to use proper materials in the installation of the Tank so as to prevent pieces of the Tank from entering the food; and/or
- c. Failing to properly install the Tank so as to prevent pieces of the Tank from entering the food.

19.

Nether's negligence caused a foreseeable risk of harm to Bridgetown. That risk caused harm to a protected interest of Bridgetown.

20.

Nether's conduct was unreasonable in light of the circumstances.

21.

Nether's negligence was the proximate cause of damage to Bridgetown as alleged above.

Jury Trial Demand

Bridgetown demands a jury trial on all questions of fact or combined questions of law and fact raised by this complaint.

WHEREFORE, Bridgetown prays for judgment in the amount of \$519,480.00, its costs, and disbursements herein, and all other relief as the Court deems just and appropriate.

DATED this 18th day of October, 2018.

KILMER, VOORHEES & LAURICK, P.C.

s/Kurt Peterson
Kurt C. Peterson, OSB No. 980065
Of Attorneys for Plaintiff